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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,161	08/30/2004	Peter King	030977-00002	6683

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ARENT FOX LLP  
1050 CONNECTICUT AVENUE, N.W.  
SUITE 400  
WASHINGTON, DC 20036

EXAMINER
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LEFF, STEVEN N

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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11/05/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com  
IPMatters@arentfox.com  
Patent\_Mail@arentfox.com

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/505,161</p>	<p><b>Applicant(s)</b> KING, PETER</p>	
	<p><b>Examiner</b> STEVEN LEFF</p>	<p><b>Art Unit</b> 1794</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 23 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 112 2<sup>nd</sup> par. rejection of claim 6.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: 1-8.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/Callie E. Shosho/  
Supervisory Patent Examiner, Art Unit 1794

Continuation of 11. does NOT place the application in condition for allowance because: With respect to applicant's argument that the phrase "high voltage charging circuit" is defined by the specification, it is noted that the features upon which applicant relies (i.e., that a high voltage charging circuit is defined as 85kV) is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to applicant's argument that Dunaway does not teach an inclined chute, applicant is urged to column 3 lines 47-49 which states that the powder is predisposed to move toward the blade or "inclined chute", and column 3 lines 52-54 which states that the powder passes by the free end of the "inclined chute" thus positively teaching delivering the coating substance to a location above said surface carrying (fig. 1) said product via an inclined chute (fig. 1 ref. # 40, col. 2 line 56+) down which the coating substance falls under gravity (col. 3 line 55+), in the direction of said surface from the end of the inclined chute (col. 3 line 55+). It is further noted that Dunaway continues by stating at column 3 lines 55-57 that the powder will fall of its own weight from the "inclined chute" (ref. #40), and thus due to the coating being located above the product to be coated and due to the laws of gravity, gravity is always acting on the coating since the coating powder is predisposed to move toward the blade or "inclined chute", due to the omnipresent force of gravity.

Regarding applicants' argument that Dunaway teaches the use of air streams which are used to restrict the zone of the falling powder and not disperse the falling powder and that the examiner has not provided evidence with respect to these urgings, applicant is initially urged to figure 1 which clearly depicts a dispersed powder with respect to the powder within the hopper. Applicant is further urged to column 1 lines 63-66 which states that an object of the invention is to dispense a "fine cloud of material", where it is further noted that in order for the air streams to properly restrict the zone of the falling powder, the air streams must act with a force which maintains this zone by blowing the falling powder, where blowing the falling powder positively would cause the coating substance to be dispersed, where the dispersion takes place in a defined application area. It is further noted that the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

With respect to applicants argument that Dunaway does not teach that the particles of powder are themselves charged since the electrostatic charging tube is for wiping the surface of the roller, it is noted that the roller is grounded (col. 4 line 1) and thus the electric field produced by Dunaway wipes the roller surface clean due to the coating powder accepting a charge and being repelled by the grounded roller due to the electric field which is produced by the electrostatic field generator, and thus the coating possess a charge. It is further noted that the disclosure by Dunaway on column 1 lines 24-32 is directed to the prior art and not to the deficiencies of Dunaway as asserted by applicant, where this passage of Dunaway is directed to overcoming the limitations of the prior art with respect to charged coating substances and thus since Dunaway teaches an electrostatic field producing means, Dunaway positively teaches subjecting the coating substance to an electric field whereby the coating substance is charged.

Regarding applicant's argument that Yonkers is silent with respect to an inclined chute, applicant is urged to figure 4, reference numbers 72 and 70, where the bottom of both reference 72 and 70 are inclined for conveying the coating substance.

With respect to applicant's urging that Yonkers is silent with respect to a gas jet nozzle located substantially immediately beneath the exit of the chute, applicant is urged to figure 4 where gas jet nozzle 94 is substantially immediately below the area depicted by the exit end of the chute 72 which is for helping convey the coating substance and thus Yonkers teaches delivering the coating substance to a location above said surface carrying (fig. 4) said product via an inclined chute (fig. 4 ref. #70, #72, col. 3 line 43+).

With respect to applicant's argument that Yonkers does not teach an inclined chute, it is noted that the powder will fall of its own weight from the "inclined chute" (ref. #70 and 72), and thus due to the coating being located above the product to be coated and due to the laws of gravity, gravity is always acting on the coating since the coating powder is predisposed to move toward the blade or "inclined chute", due to the omnipresent force of gravity.

With respect to applicant's argument that Yonkers does not teach charging the powder, and that Yonkers merely provides a structure to free powder from the roller, applicant is urged to column 2 lines 57-61 which states that the electric field helps to disperse the powder material, where the powder material is aided in dispersing due to the particles being charged by the electric field generated by the high voltage source.

With respect to applicant's urging that Yonkers is silent with respect to a gas jet nozzle located substantially immediately beneath the exit of the chute, applicant is urged to figure 4 where gas jet nozzle 94 is substantially immediately below the area depicted by the exit end of the chute 72 which is for helping convey the coating substance and thus Yonkers teaches delivering the coating substance to a location above said surface carrying (fig. 4) said product via an inclined chute (fig. 4 ref. #70, #72, col. 3 line 43+), where the electrode is adjacent to the nozzle.

In response to applicant's argument that electrode structure is not below an exit end of the chute it is noted that these features upon which applicant relies are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In the instant case claims 1 and 5 teach that the electrode structure is attached to or located adjacent to the nozzle.

Regarding applicants' argument that Yonkers teaches the use of air streams which are used to restrict the zone of the falling powder and not disperse the falling powder, and that the examiner has not provided evidence with respect to these urgings, applicant is initially urged to figure 4 which clearly depicts a dispersed powder with respect to the powder within the hopper. Applicant is further urged applicant is urged to column 4 lines 32-37 where it is noted that in order for the air streams to properly restrict the zone of the falling powder, the air streams must act with a force which maintains this zone by blowing the falling powder, where blowing the falling powder positively would cause the coating substance to be dispersed, where the dispersion takes place in a defined application area.

With respect to the obviousness double patenting rejection of 11/166175, 10/959300, and 11/141050 and specifically applicant's argument that Dunaway does not teach the charging of a falling coating substance it is noted that the roller is grounded (col. 4 line 1) and thus the electric field produced by Dunaway wipes the roller surface clean due to the coating powder accepting

a charge and being repelled by the grounded roller due to the electric field which is produced by the electrostatic field generator, and thus the coating possess a charge.